

## CHAPTER 10

### ADMINISTRATIVE APPEALS, CIVIL ACTIONS, ATTORNEY'S FEES, AND APPOINTMENT OF COUNSEL

#### I. INTRODUCTION

Aggrieved persons must be made aware of administrative and civil action time limitations which potentially may bar an aggrieved person's ability to file appeals and civil actions. The time limits specified throughout this Management Directive are stated in **calendar days**.

All parties should be aware that attorney's fees are awardable at the administrative level and beyond under Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-16) and under the Rehabilitation Act of 1973 (29 U.S.C. § 791 *et seq*), but that attorney's fees are not awardable at the administrative level under the Age Discrimination in Employment Act (29 U.S.C. § 633a), or the Equal Pay Act (29 U.S.C. § 206(d)).

Finally, the agency must advise complainants that they can request that a U. S. district court appoint counsel for them after they file suit in that court.

#### II. ADMINISTRATIVE APPEALS

##### A. Time Limits for Appeals to the Commission - Section 1614.402

The following time limits apply for filing an appeal to the Commission:

1. Appeals limits for agency final decisions and dismissals on individual complaints of discrimination at agencies covered by 5 U.S.C. § 7121(d).
  - o Within thirty (30) days of receipt of the agency final decision.

2. Appeals limits for agency final decisions or dismissals on individual complaints of discrimination at agencies not covered by 5 U.S.C. § 7121(d)<sup>1</sup> where both a complaint and grievance are filed.
  - a. Within thirty (30) days of receipt of agency final decision.
  - b. Section 1614.301 (c) provides that where an aggrieved person whose employing agency is not covered by 5 U.S.C. § 7121(d) files a grievance and an EEO complaint on the same matter, the time limits contained in section 1614.106 (individual complaint processing) and section 1614.402 (time for appeals to the Commission) may be held in abeyance during the processing of the grievance if the grievance raises discrimination issues.<sup>2</sup>
3. Appeals limits for agency final decisions on class complaints of discrimination (§ 1614.402(a)).
  - o Within thirty (30) days of receipt of the decision.
4. Appeals limits for allegations of non-compliance with a settlement agreement or a final decision of an agency which has not been appealed to the Commission or been the subject of a civil action (§ 1614.504). **Notice to the EEO Director of non-compliance is a prerequisite.**<sup>3</sup>

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<sup>1</sup> For example, the United States Postal Service, United States Postal Rate Commission and the Tennessee Valley Authority.

<sup>2</sup> Abeyance notice is required. See Chapter 2 section V. A. 1. d., page 11 of the Management Directive.

<sup>3</sup> As a prerequisite to the agency determination, section 1614.504 provides :

If the complainant believes that the agency has failed to comply with the terms of a settlement agreement or final decision, the complainant shall notify the EEO  
(continued...)

- a. Within thirty (30) days of the complainant's receipt of an agency's determination on an allegation of non-compliance.
  - b. Thirty-five (35) days after the complainant serves the agency with an allegation of noncompliance, if the agency has not issued a determination.
5. Appeals limits on final grievance decisions in employment discrimination matters where 5 U.S.C. § 7121(d) applies to the agency.
- Within 30 days of receipt of the final decision of an agency, an arbitrator, or the Federal Labor Relations Authority when employment discrimination was raised.
6. Limits on petitions for consideration of final decisions of the MSPB on mixed case appeals and mixed case complaints (5 C.F.R. § 1201.151 et seq. and 5 U.S.C. § 7702).<sup>4</sup>
- a. Within 30 days of receipt of the final MSPB decision.
  - b. Within 30 days after the decision of a MSPB field office becomes final.

**B. Petitions to Consider MSPB Decisions**

A petition to EEOC to consider a final MSPB decision on a mixed case appeal or on the appeal of a final decision on a mixed case complaint, under sections 1614.303 and 1614.304, must be in writing and must include:

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Director, in writing, of the alleged noncompliance within 30 days of when the complainant knew or should have known of the alleged noncompliance.

<sup>4</sup> The Commission will only accept petitions for review of final MSPB decisions.

1. The name and address of the petitioner and of petitioner's representative (if any);
2. A statement of the reasons why the decision of the MSPB is alleged to be incorrect, only with regard to the issues of discrimination based on race, color, religion, sex, national origin, age, or handicap;
3. A copy of the decision issued by the MSPB; and
4. The signature of the petitioner or representative, if any.

**C. Appeal to MSPB on Mixed Case Complaint**

At the time the agency issues its final decision on a mixed case complaint the agency shall advise the complainant of the right to appeal the matter to the MSPB (not the EEOC) within twenty (20) days of receipt of the agency's final decision provided at section 1614.302(d)(3).

**III. CIVIL ACTIONS**

**A. Time Limits for Civil Actions**

1. Title VII, Age Discrimination in Employment Act, Rehabilitation Act -- 29 C.F.R. § 1614.408

A complainant who has filed an individual complaint, an agent who has filed a class complaint, or a claimant who has filed a claim for individual relief in a class action complaint may file a civil action in an appropriate United States district court:

- a. Within 90 days of receipt of an agency's final decision on an individual complaint, or final decision on a class complaint, if no appeal has been filed.
- b. After 180 days from the date of filing an individual or class complaint if no appeal has been filed and no agency final decision has been issued.

- c. Within 90 days after receipt of the Commission's final decision on appeal.
  - d. After 180 days from the date of filing an appeal with the Commission if there has been no final decision by the Commission.
2. The Equal Pay Act -- 29 C.F.R. § 1614.409

Regardless of whether the individual complainant pursued any administrative complaint processing, a complainant may file a civil action in a court of competent jurisdiction within two years or, if the violation is willful, within three years of the date of the alleged violation of the Equal Pay Act. Recovery of back wages is limited to two years prior to the date of filing suit, or to three years if the violation is willful; liquidated damages in an amount equal to lost back wages may also be awarded. **The filing of an administrative complaint does not toll the time for filing a civil action.**

**B. Termination of EEOC Processing**

Filing a timely civil action under any of these statutes terminates Commission processing of an appeal. If a civil action is filed after an appeal has also been filed, the parties are requested to notify the Commission of this event in writing.

**C. Mixed Case Complaints**

The Civil Rights Act of 1991 did not extend the time limit for filing a civil action in mixed case complaints. See 29 C.F.R. § 1614.310 which sets forth the statutory rights to file a civil action in mixed case complaints.

**IV. ATTORNEY'S FEES AND COSTS**

Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e-16, and the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 et seq., provide for an award of attorney's fees and costs if a complaint of unlawful employment

discrimination is resolved in favor of the complainant. Attorney's fees are not recoverable at the administrative level under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 633a, or the Equal Pay Act (EPA), 29 U.S.C. § 206(d). See In the Matter of Albert D. Parker, B-215672, March 18, 1985, Decision of the U.S. Comptroller General.

Section 1614.501(e) sets out the requirements and limitations on the award of attorney's fees and costs.

**V. NOTICE OF COMPLAINANT'S RIGHT TO REQUEST COURT APPOINTMENT OF COUNSEL**

Consistent with the court's holding in Hilliard v. Volcker, 659 F.2d 1125 (D.C. Cir. 1981), it is the Commission's policy to require all federal agencies subject to this directive to fulfill their duty to inform complainants, in writing, of their statutory right to request court appointment of counsel for representation in connection with the filing of civil actions which arise under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16, and the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 et seq.

In Hilliard, the court held that agencies must inform administratively unsuccessful complainants that, in the event they file a civil action, the court has discretionary authority to appoint counsel for them. A litigant who fails to request counsel should not be penalized because an agency has been remiss in its duty to inform the complainant of the court's authority.

Therefore, all federal agencies subject to 29 C.F.R. Part 1614 are required to include the following language in every final decision on complaints which allege discrimination on the bases of race, color, religion, sex, national origin, and/or handicap:

Within 30 days of your receipt of the agency's final decision, you have the right to appeal this decision to:

Equal Employment Opportunity Commission  
Office of Federal Operations  
P.O. Box 19848  
Washington, D.C. 20036

You also have the right to file a civil action in an appropriate United States district court. If you choose to file a civil action, you may do so

- within 90 days of receipt of this final decision if no appeal has been filed, or
- within 90 days after receipt of the EEOC's final decision on appeal, or
- after 180 days from the date of filing an appeal with the EEOC if there has been no final decision by the Commission.

You must name the person who is the official agency head or department head as the defendant. Agency or department means the national organization, and not just the local office, facility, or department in which you might work. Do not name just the agency or department. In your case, you must name \_\_\_\_\_ as the defendant. (The agency must supply the name of the proper person). You must also state the official title of the agency head or department head. Failure to provide the name or official title of the agency head or department head may result in dismissal of your case.

If you decide to file a civil action, under Title VII or under the Rehabilitation Act, and if you do not have or cannot afford the services of an attorney, you may request that the Court appoint an attorney to represent you and that the Court permit you to file the action without payment of fees, costs, or other security. **The grant or denial of the request is within the sole discretion of the Court.** Filing a request for an attorney does not extend your time in which to file a civil action. Both the request and the civil action **MUST BE FILED WITHIN NINETY (90) CALENDAR DAYS** of the date you receive the Commission's decision.